

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

DOMINION ENERGY BRAYTON )  
POINT, LLC, )

Plaintiff, )

vs. )

No. 04-12225 (RCL)

STEPHEN L. JOHNSON, )  
in his capacity as acting Administrator )  
of the U.S. Environmental Protection )  
Agency, U.S. ENVIRONMENTAL )  
PROTECTION AGENCY, and )  
REGION I of the U.S. )  
Environmental Protection Agency, )

Defendants. )

**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION  
FOR AMENDED ARGUMENT DATE REGARDING  
DEFENDANTS' MOTION TO DISMISS**

The Defendants hereby move this Court pursuant to Fed. R. Civ. P. 6(b) for an amended oral argument date for the Defendants' pending motion to dismiss. There is good cause for this motion for an amended argument date, and in support thereof, the Defendants state as follows:

Plaintiff Dominion Energy Brayton Point, LLC filed its Complaint on September 22, 2004, seeking an order instructing the Administrator of the U.S. Environmental Protection Agency ("EPA") to conduct an evidentiary hearing regarding the terms of a National Pollution Discharge Elimination System ("NPDES") permit for one of its electric generating facilities known as the Brayton Point Station.

Defendants EPA, the EPA Administrator, and EPA Region I filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), for lack of subject matter jurisdiction and for failure to state a claim, on December 27, 2004. Plaintiff responded to that motion on January 12,

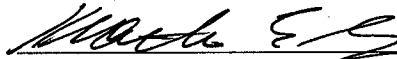
2005, and Defendants submitted a reply memorandum on March 18, 2005, pursuant to the Court's Order of March 10, 2005. Defendants requested oral argument for their motion, and on March 23, 2005, the Court issued an Order setting oral argument for Monday, May 2, 2005, at 3:00 pm.

Department of Justice counsel will be out of the country between April 20, 2005, and May 1, 2005; the Assistant U.S. Attorney assigned to this case will be in trial during the week of May 2, 2005, in United States v. Buckley, Case No. 00-11632 (D. Mass.) (RWZ); and EPA counsel have scheduling conflicts that will prevent them from attending oral argument during the week of May 2, 2005, and during May 17-19, 2005. Plaintiff's counsel also has a scheduling conflict on May 13, 2005. The Defendants therefore request that the Court amend its Order of March 10, 2005 to set the oral argument date for Defendants' motion to dismiss on May 9, 2005, or as soon as possible thereafter, with the exception of May 13, 2005, and May 17-19, 2005.

Respectfully submitted,

Dated: March 30, 2005

By:


  
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Counsel for Defendants STEPHEN L. JOHNSON,  
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Protection Agency, U.S. ENVIRONMENTAL  
PROTECTION AGENCY, and REGION I of the  
U.S. Environmental Protection Agency

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Unopposed Motion for Amended Argument Date Regarding Defendants' Motion to Dismiss and Memorandum in Support of Unopposed Motion for Amended Argument Date Regarding Defendants' Motion to Dismiss, were served this 30<sup>th</sup> day of March 2005, via first class mail, on counsel listed below:

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Heather E. Gange